

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA**

GILBERT DEAN DAVIS,)	
)	
Petitioner,)	
)	
vs.)	Case No. CIV-06-277-M
)	
JUSTIN JONES,¹)	
)	
Respondent.)	

REPORT AND RECOMMENDATION

Petitioner, a state prisoner appearing *pro se*, has filed a motion for leave to proceed *in forma pauperis* and supporting affidavit. Pursuant to an order entered by United States District Judge Vicki Miles-LaGrange this matter has been referred to the undersigned Magistrate Judge for initial proceedings consistent with 28 U.S.C. § 636(b)(1)(B). Having reviewed said motion, the undersigned finds that Petitioner has sufficient funds to prepay the filing fee of \$5. Because he does not qualify for authorization to proceed without prepayment of the filing fee, it is recommended that Petitioner's motion [Doc. No. 2] be denied and that he be ordered to prepay the full \$5 filing fee for this action to proceed. 28 U.S.C. § 1915(a)(1). *See Lister v. Department of the Treasury*, 408 F.3d 1309, 1312 (10th Cir. 2005) (magistrate judge should have issued a report and recommendation, recommending denial of the motion to proceed *in forma pauperis*.).

It is further recommended that unless Petitioner pays the \$5 filing fee in full to the

¹The Petitioner listed the State of Oklahoma as respondent. However, where the applicant is presently in custody pursuant to the state judgment in question, the state officer having custody of the applicant is the properly named respondent. Rule 2, Rules Governing Section 2254 Cases in the United States District Courts. Therefore, Justin Jones, the Director of the Department of Corrections is substituted as Respondent for the State of Oklahoma.

Clerk of the Court within twenty (20) days of any order adopting this Report and Recommendation, this action be dismissed without prejudice to refiling. Petitioner is advised of his right to file an objection to this Report and Recommendation with the Clerk of this Court by April 10, 2006, in accordance with 28 U.S.C. § 636 and Local Civil Rule 72.1. Petitioner is further advised that failure to timely object to this Report and Recommendation waives the right to appellate review of both factual and legal issues contained herein. *Moore v. United States*, 950 F. 2d 656 (10th Cir. 1991).

The Clerk is hereby ordered not to forward a copy of the petition to the appropriate state agency until further order of the Court.

ENTERED this 21st day of March, 2006.



BANA ROBERTS
UNITED STATES MAGISTRATE JUDGE